

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CLERK'S MINUTES

BEFORE DISTRICT JUDGE JAMES O. BROWNING (IN LAS CRUCES)

CASE No.: No. CR 15-4268 JB **DATES:** April 4-5, 2018

CASE CAPTION: *USA v. DeLeon, et al.*

CRD: C. Bevel **COURT REPORTER:** J. Bean

COURT IN SESSION:	8:34am	COURT IN RECESS:	12:06pm	3 hr. 32 min
	1:06pm		5:37pm	4 hr. 31 min
	<u>Day 2:</u>		<u>Day 2:</u>	
	8:32am		12:04pm	3 hr 37 min
	1:06pm		5:51pm	4 hr 45 min
			16 hr. 22 min	

TYPE OF PROCEEDING: Motion Hearing (see below)/Pretrial Conference (continuation from 3/12-16/18)

COURT'S RULING/DISPOSITION:

1. Sealed Emergency, Partially Unopposed Motion to Withdraw as counsel, to sever and to Continue (1959) **DENIED WITHOUT PREJUDICE**
2. Motion in Limine Regarding Alleged Bad Acts (1308)
3. Motion in Limine Regarding Alleged Bad Acts (1528)
4. Motion in Limine Regarding Alleged Bad Acts 1531)
5. Motion in Limine Regarding Alleged Bad Acts (1602)
6. Motion to Dismiss (1283)
7. Defendant Edward Troup's Motion to Dismiss (PreIndictment Delay) (1284)
8. United States Motion in Limine to Exclude Extrinsic Evidence in Violation of Federal Rule of Evidence 403 (1754)
9. United States Motion in Limine to Preclude Cross-Examination of Special Agent Acee on Unrelated Conduct (1871)
10. United States Notice of Proposed James Statements for Trial 2 (1903)
11. Sealed Motion to Quash Ex Parte Writ of Habeas Corpus ad Testificandum for Custody of Inmate Fred Quintana and Request for Emergency Telephonic Hearing (1919) **DENIED**
12. Notice of Objection to Proposed Courtroom Seating Arrangement (1936) **WITHDRAWN**
13. Motion to Bifurcate Counts 4 & 5 From Counts 13 and 13-16 (1948) **INCLINED TO DENY**
14. United States Motion in Limine (1977) **GRANTED**
15. Motion in Limine to Admit Out-of-Court statements Made by Adrian Burns (1978) **GRANTED**
16. Restricted Motion to Obtain Physical and Mental Health Records (1985)
17. Notice to Court. Request for Order Compelling Disclosure and Motion to Strike Certain Witnesses (1993)

18. Edward Troup's Objection to the Government's Notice of Other Crimes or Bad Acts Pursuant to Rule 404(b) (1994)
19. Motion for Order to Show Cause Why the Custodian for Bernalillo County Sheriff's Department Should not be Held in Contempt (1996) **WITHDRAWN**
20. Restricted Motion to Strike Government Witnesses Brian Rascon and Raymond Rascon (2011)
21. Restricted Motion to Strike Government Witness Benjamin Clark (2012)
22. United States Sealed Opposed Motion in Limine Regarding Statements Against Penal Interest Under Rule 804(B)(3) (1912)

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Maria Armijo/Randy Castellano/
Matthew Beck, AUSAs

ATTORNEYS PRESENT FOR DEFENDANT(S):

Brock Benjamin (for Deft. Joe Lawrence Gallegos)

Cori Harbour-Valdez/Patrick Burke (for Deft.
Edward Troup)

Robert Cooper/James Castle (for Deft. Billy Garcia)

Jeff Lahann/Joe Shattuck (for Deft. Allen Patterson)

John Granberg (for Deft. Christopher Chavez)

Billy Blackburn (for Deft. Arturo Arnulfo Garcia)

Donovan Roberts/Lisa Torracco (for Deft. Andrew
Gallegos)

COURT: Calls case. Counsel enter appearances, defendants present in custody.
Cynthia Gilbert, paralegal, present for defense team.

COURT IN SESSION:

- 8:34am Court addresses counsel regarding privacy covers and visibility of leg restraints. All attorneys move to jury box to view privacy screens covering defendants tables.
- 8:41am Court addresses counsel regarding order of motions to be addressed.
- 8:43am Mr. Davidson addresses Court, argues in support of Sealed Motion Doc. 1959.
- 8:47am Mr. Blackburn addresses Court, argues in support of Mr. Davidson's motion to withdraw. Request Court continue trial to July trial with other related defendants. Informs Court of conflict with witness, James "Daffy" Garcia.
- 8:59am Mr. Burke addresses Court regarding conflict of Mr. Davidson and Mr. Blackburn.
- 9:00am Ms. Armijo responds, concerned with Mr. Blackburn's conflict regarding witness Garcia.
- 9:03am Court directs government to file a motion regarding disqualification of Mr. Blackburn. Court concerned about late issues being raised.
- 9:04am Ms. Armijo indicates conflict was raised orally in December hearings. Ms. Armijo has

nothing further on Mr. Davidson's motion.

9:05am Bench conference with counsel.

9:56am Court addresses all counsel, Court will deny Mr. Davidson's motion without prejudice.

9:58am Mr. Burke addresses Court regarding Mr. Blackburn's conflict.

9:59am Court responds, suggests counsel speak during break.

9:59am Mr. Castle requests hand written notes taken during James Garcia's debrief be turned over as soon as possible.

10:00am Court recommends counsel discuss, Court to address Defendant's Billy Garcia's Bad Acts.

10:01am Court in recess.

10:31am Court in session.

10:32am Court will address Billy Garcia's Bad Acts Motion, Doc. 1308, appendix A.

10:32am Mr. Castle addresses Motion.

10:47am Mr. Castellano responds.

11:28am Court addresses counsel regarding Bad Acts, Doc. 1528, Mr. Blackburn wishes to move motion to later after he and Ms. Armijo continue to narrow those issues.

11:28am Court addresses J. Gallegos Motion in Limine Doc 1602.

11:31am Ms. Armijo responds re: J. Gallegos Motion in Limine Doc. 1602.

11:33am Mr. Brock responds.

11:34am Court addresses Mr. Brock and Ms. Armijo.

11:46am Ms. Armijo and Ms. Harbour-Valdez address juror excusals.

11:48am Court has removed the jurors that counsel have agreed should be excused for hardship. Court to provide a random seating chart to counsel before Monday. Keeping in mind that not all jurors listed may be present.

11:54am Mr. Cooper asks when chart might be available.

11:54am Court addresses counsel regarding court's denial of excusal which were left in the pool. Ms. Armijo and Ms. Harbour-Valdez to meet and confer regarding denied excusals. Ms. Armijo requests larger note pads for jurors to take notes on.

11:58am Mr. Castle addresses the need for Agent Acee's testimony, Agent Acee not present for hearings.

12:00pm Mr. Beck responds, Agent Acee's testimony was completed on March 16, 2018.

12:00pm Mr. Castle has re-direct for Agent Acee.

12:02pm Mr. Beck indicates Agent Acee is not available today.

12:03pm Mr. Burke requests 10 minutes on re-direct for Agent Acee.

12:05pm Mr. Castle and Mr. Burke agree that testimony could be completed by phone with Agent Acee.

12:05pm Ms. Torracco requests counsel be allowed to bring their own chairs.

12:06pm Court in recess.

1:06pm Court in session.

1:10pm Court addresses counsel regarding seating charts, chairs and notepads.

1:13pm Mr. Beck addresses Court regarding contact with witness James Garcia and Mr. Glazener, government will call James Garcia as a witness.

1:21pm Mr. Blackburn addresses court about possibility of James Garcia waiving the conflict.

1:24pm Mr. Beck responds.

1:27pm Mr. Castle responds.

1:30pm Mr. Beck addresses Court regarding Doc. 1909, responds filed last night, Doc. 2051.

1:40pm Mr. Castle responds.

1:45pm Court takes up Phillip Sapien's Sealed Motion to Quash Ex Parte Writ of Habeas Corpus ad Testificandum for Custody of Inmate Fred Quintana, Doc. 1919.

1:45pm Mr. Castle calls witness Fred Quintana, witness sworn. Mr. Quintana's attorney Philip Sapien present.

1:45pm Mr. Castle conducts direct examination of witness Fred Quintana.

1:50pm Mr. Burke conducts direct examination of witness Fred Quintana.

1:54pm Mr. Grandburg conducts direct examination of witness Fred Quintana.

1:55pm Mr. Beck conducts cross examination of witness Fred Quintana.

2:01pm Mr. Castle conducts re-direct examination of witness Fred Quintana.

2:03pm Mr. Burke conducts re-direct examination of witness Fred Quintana.

2:07pm Court excuses witness Fred Quintana.

2:08pm Mr. Castellano addresses Court regarding statements.

2:10pm Mr. Castle calls witness Andrew Armijo, witness sworn.

2:11pm Mr. Castle conducts direct examination of witness Armijo.

2:30pm Mr. Beck conducts cross examination of witness Armijo.

2:31pm Court in recess.

2:53pm Mr. Beck resumes cross examination of witness Armijo.

3:02pm Court excuses witness Mr. Armijo.

3:02pm Mr. Cooper addresses Court regarding Ms. Gibson, she has returned to TorC. Will be back tomorrow. Mr. Cooper calls Edgar Rosa, task force agent, witness sworn.

3:03pm Mr. Cooper conducts direct examination of witness Edgar Rosa.

3:19pm Mr. Beck conducts cross examination of witness Edgar Rosa.

3:28pm Mr. Cooper conducts re-direct examination of witness Edgar Rosa.

3:30pm Court excuses witness Edgar Rosa.

3:30pm Mr. Castle calls witness Juan Barela, witness sworn.

3:30pm Mr. Castle conducts direct examination of witness Barela.

3:41pm Mr. Castellano conducts cross examination of witness Barela.

3:47pm Mr. Castle conducts re-direct examination of witness Barela.

3:48pm Court excuses witness Barela.

3:49pm Mr. Castle addresses Court regarding next motion Doc. 1754

3:50pm Mr. Beck responds.

3:52pm Court inclined to allow, it will be up to defendants.

3:53pm Mr. Burke nothing to add.

3:54pm Ms. Armijo addresses Court, believes jury does not want to see extrinsic evidence.

3:54pm Court addresses United States' Motion in Limine to Preclude Cross-Examination of Agent Acee on Unrelated Conduct. Doc. 1871 – at present time counsel will not go in to that. If the door is opened, will address it at that time via bench conference.

3:57pm Court addresses counsel on James statements and additional briefing related to Doc. 1903. Court addresses counsel on Mr. Sapien's motion regarding Fred Quintana, motion Doc. 1919 is effectively **denied**.

4:01pm Mr. Castle responds, documents 1936 and 1996 are withdrawn.

4:02pm Court addresses counsel on Doc. 1948 Motion to Bifurcate Counts 4 & 5 from Counts 1-3 and 13-16.

4:05pm Mr. Benjamin responds regarding defendant J. Gallegos position.

4:06pm Mr. Castle argues in support of Motion to Bifurcate Doc. 1948.

4:09pm Ms. Torracco argues in support of bifurcation of Counts 4 & 5.

4:24pm Mr. Castellano argues against bifurcation.

4:32pm Court in recess.

4:51pm Court in session.

4:52pm Court addresses counsel regarding sequencing and counsel can create their own seating chart. Court indicates Mr. Glazener will be here tomorrow at 10am with witness James Garcia.

4:54pm Ms. Armijo addresses sequence for jurors.

4:54pm Court will have seating chart Monday morning.

4:56pm Court addresses counsel regarding letter received from Mr. Fallick, regarding Leroy

Lucero's appearance and testimony tomorrow. Court will file letter on the docket.

4:58pm Mr. Castle addresses court regarding spill over testimony of witnesses related to Counts 4 & 5.

4:59pm Court is likely to deny bifurcation.

5:00pm Court will take up United States Motion in Limine Doc. 1977.

5:01pm Mr. Castellano addresses court in support of Motion.

5:02pm Court inclined to grant the motion.

5:06pm Mr. Benjamin responds.

5:11pm Ms. Torraco responds, filed response shortly before noon, Doc. 2066.

5:11pm Court has reviewed the response.

5:12pm Ms. Torraco argues against motion.

5:15pm Mr. Castellano responds.

5:21pm Court will grant the motion Doc 1977.

5:26pm Ms. Torraco addresses Court, clarifying what can be said related to ultimate finding by State Magistrate Judge.

5:28pm Court takes up Motion in Limine to Admit Out-of-Court Statements Made by Adrian Burns, Doc. 1978. Court inclined to grant motion.

5:29pm Ms. Armijo argues in support of Motion in Limine.

5:31pm Mr. Benjamin responds, argues against Motion in Limine.

5:33pm Ms. Torraco responds, argues against Motion in Limine.

5:35pm Court addresses counsel regarding statement of the case, time for closing arguments, and spiral notebooks for jurors.

5:36pm Counsel agree to spiral notebooks.

5:37pm Court will order 18 and a few extras.

5:37pm Court in recess.

DAY 2: 4/5/18

8:32am Court in session.

8:33am Court addresses Mr. Roberts on anything further on Burns statements. Court grants Motion Doc. 1978.

8:33am Mr. Benjamin responds, will draft a limiting instruction for the Court's review.

8:35am Court clarifies statement that will be admitted.

8:40am Ms. Torraco addresses Court.

8:43am Mr. Beck addresses Court with Agent Acee's notes from James Garcia debrief.

8:55am Court addresses Mr. Beck and request rough draft of factual basis for James Garcia's

plea.

8:56am Mr. Beck reads factual basis for James Garcia plea.

9:15am Mr. Burke addresses Court responds to hand written notes of Agent Acee.

9:27am Ms. Harbour-Valdez addresses Court.

9:36am Mr. Castle addresses Court. Requests the plea agreement proposed for James Garcia to be disclosed to defense counsel, could be subject to protective order.

9:46am Mr. Burke responds, requests more time to consult with Ms. Harbour-Valdez.

9:50am Ms. Harbour-Valdez request more time to consult with Mr. Burke.

9:50am Mr. Castle responds, addresses Court.

9:54am Court addresses Mr. Beck regarding concerns about James Garcia pleading guilty tomorrow.

9:55am Mr. Beck responds, has concerns about witness James Garcia pleading guilty.

9:58am Court directs Mr. Beck to provide a copy of draft of factual basis for plea to the Court.

9:58am Mr. Beck to provide copies. Mr. Beck does not object to ex parte meeting with Mr. Castle.

9:59am Court directs Mr. Beck to provide CRD with copy of plea agreement. (Marked as exhibit 1)

10:00am Mr. Blackburn indicates witness James Garcia's attorney Mr. Glazener is here.

10:01am Court in recess.

11:11am Agent Acee appears telephonically.

11:22am Mr. Castle conducts re-direct of Agent Acee.

11:54am Mr. Castle moves to admit exhibits AA and AB, no objections by defense.

11:54am Court admits exhibits AA and AB.

11:54am Mr. Beck conducts re-cross examination of Agent Acee.

12:03pm Defendants have no further questions for Agent Acee.

12:04pm Court excuses Agent Acee.

12:04pm Court in recess.

1:06pm Court in session in ex parte conference with Mr. Castle.

1:18pm Court in recess.

1:26pm Court addresses Deputy Gunter regarding doors open for defense counsel at 7:30am and not removing defendants via the transport out of the building while jurors are leaving.

1:35pm Ms. Harbour-Valdez addresses Court regarding sequential list.

1:36pm Court indicates the list will be coming shortly.

1:37pm Ms. Armijo responds.

1:37pm Mr. Cooper calls witness Joshua Mirka, witness sworn, present with counsel Ms. Gibson.

1:37pm Mr. Cooper conducts direct examination of witness Mirka.

1:45pm Mr. Beck conducts cross examination of witness Mirka.

1:49pm Mr. Cooper conducts re-direct of witness Mirka.

1:50pm Court excuses witness Joshua Mirka.

1:50pm Mr. Beck addresses Court with concerns of written transcript seen by witness Mirka in custody.

1:52pm Court responds, perhaps the US Marshal can check with the facility and see what paperwork is in Lujan's cell.

1:53pm Mr. Cooper responds.

1:54pm Court directs that the taint team be in communication with the US Marshal regarding what is found.

1:55pm Ms. Armijo addresses court regarding numerous materials being found in possession of defendant Rudy Perez.

1:56pm Court to speak to taint team telephonically this afternoon regarding materials be

2:02pm Mr. Castle calls witness Joseph Otero, witness sworn.

2:02pm Bench conference with counsel.

2:08pm Mr. Castle conducts direct examination of witness Otero.

2:14pm Mr. Beck conducts cross examination of witness Otero.

2:15pm Mr. Castle conducts re-direct examination of witness Otero.

2:16pm Court excuses witness Otero.

2:17pm Mr. Castle calls witness Leroy Lucero, witness sworn.

2:17pm Mr. Castle conducts direct examination of witness Leroy Lucero.

2:23pm Mr. Beck addresses court regarding Kastigar letter provided to witness Lucero, indicates witnesses attorney Mr. Fallick availability by phone.

2:23pm Court addresses witness Lucero regarding protections of Kastigar letter.

2:23pm Mr. Castellano addresses Court regarding witness Lucero not feeling well.

2:24pm Mr. Castle continues with direct examination of witness Lucero.

2:49pm Court in session.

2:50pm Court addresses counsel regarding taint attorneys availability by phone.

2:55pm Court addresses taint attorney Mr. Eicker telephonically regarding materials at detention facility in hard copy that should not be.

3:06pm Mr. Cooper addresses Court, objects to blanket search of defendants cells.

3:07pm Ms. Armijo responds.

3:08pm Court directs that counsel provide a list including cooperators to CRD
Mr. Castle resumes direct examination of witness Leroy Lucero.

3:17pm Mr. Benjamin conducts direct examination of witness Leroy Lucero.

3:22pm Mr. Beck conducts cross examination of witness Leroy Lucero.

3:30pm Mr. Castle conducts re-direct examination of witness Leroy Lucero.

3:36pm Court excuses witness Leroy Lucero.

3:37pm Court will address defense Notice to Court, Request for Order Compelling Disclosure to
Motion to Strike Certain Witnesses. Doc. 1993.

3:38pm Mr. Castle addresses Doc. 1993.

3:39pm Mr. Beck responds, notes have been turned over.

3:40pm Mr. Castle continues.

3:48pm Mr. Benjamin addresses Court.

3:49pm Court addresses Edward Troup's Objections Doc. 1994

3:49pm Mr. Castellano responds.

3:50pm Mr. Burke responds.

3:56pm Court address counsel, inclined to allow as indicated on the record.

4:04pm Court takes up Restricted Motion to Strike Government Witnesses Brian Rascon and
Raymond Rascon Doc. 2011.

4:04pm Mr. Burke addresses Motion.

4:05pm Mr. Beck responds, no pen packet existed until today, will disclose to defendants.

4:06pm Court will deny Motion Doc. 2011.

4:07pm Court addresses Restricted Motion to Strike Government Witness Benjamin Clark Doc.
2012.

4:08pm Mr. Beck responds.

4:16pm Court in recess.

4:33pm Court in session.

4:38pm Court addresses counsel regarding sequential order, attempts to telephonically
conference Ms. Wild.

4:39pm Ms. Armijo and Ms. Harbour-Valdez to call Ms. Wild directly now, outside the courtroom.

4:39pm Court addresses Deputy Marshal Adrian Gunder regarding timing for arrival of
attorneys, defendants and jurors.

4:41pm Mr. Burke continues on Restricted Motion to Strike Government Witness Benjamin Clark Doc. 2012.

4:43pm Court denies Restricted Motion to Strike Government Witness Benjamin Clark Doc. 2012.

4:44pm Court inquires about time for closings – M. Armijo 3 hours combine, Mr. Benjamin 1.5 hr, Burke- 1. 15 min, Cooper – 2 hrs, Lahann 1.15 min, Grandburg- 1 hr 45 min, Blackburn 1 hr 15 min Torracco 1 hr.

4:40pm Court addresses statement of the case - directs by 10 am tomorrow defendants get back to the Government by 3:00, and then either file something agreed to by the end of business tomorrow, or send Court competing statements of the case indicating what your differences are, and then I'll try to prepare one over the weekend
No objections to voir dire. Court addresses conflict with Billy Blackburn.

4:50pm Mr. Blackburn responds.

4:56pm Deputy Gunder addresses Judge regarding taint team. Court will not give any further direction.

4:57pm Court addresses Mr. Blackburn and conducts colloquy with Arturo Garcia regarding conflict free counsel.

4:57pm Defendant responds yes, wishes to make a voluntary waiver and keep Mr. Blackburn as counsel.

5:05pm Court addresses counsel on United States Sealed Opposed Motion in Limine Regarding Statements Against Penal Interest Under Rule 804(B)(3) Doc. 1912.

5:08pm Mr. Beck responds.

5:08pm Mr. Castle will submit a small, less than five page summary argument about the application of 804(b)(3) to the specific statements.

5:10pm Mr. Beck address Claims Chart re: Billy Garcia and Troup's Motions to Dismiss.
Previously emailed to jobproposed text

5:11pm Mr. Cooper addresses court with CJA matters.

5:31pm Mr. Blackburn addresses Court ex parte.

5:51pm Court in recess.